



6/3/13

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION III
1650 Arch Street
Philadelphia, Pennsylvania 19103-2029

Mr. Michael Fields, Esq.
Baltimore County
Office of Law
400 Washington Avenue
Towson, Maryland 21204

MAY 30 2013

Re: Consent Agreement and Administrative Order for Compliance on Consent
Docket Nos. CWA-03-2013-0124 and CWA-03-2013-0125DN

Dear Mr. Fields:

Enclosed is a file-stamped copy of the Administrative Order on Consent requiring correction of alleged violations of the Clean Water Act by Baltimore County that relate to discharges of stormwater. Thank you for working with us to promptly resolve these matters.

Sincerely,

A handwritten signature in black ink, appearing to read "Nina Rivera", is written over a horizontal line.

Nina Rivera
Office of Regional Counsel (3RC20)

Enclosures



**BEFORE THE UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION III
1650 Arch Street
Philadelphia, Pennsylvania 19103-2029**

In the Matter of:

Baltimore County
County Office Building
111 Chesapeake Avenue
Suite 319
Towson, MD 21204

Respondent

ADMINISTRATIVE ORDER FOR
COMPLIANCE ON CONSENT

EPA Docket No. CWA-03-2013-5D

REGIONAL HEARING CLERK
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I. STATUTORY AUTHORITY

1. This Administrative Order for Compliance on Consent is issued under the authority vested in the Administrator of the United States Environmental Protection Agency (hereinafter "EPA") under Section 309(a) of the Clean Water Act ("CWA" or "the Act"), 33 U.S.C. § 1319(a). Authority has been delegated by the Administrator to the Regional Administrator of EPA Region III, who has further delegated this authority to the Director of the Water Protection Division of Region III.

II. STATUTORY AND REGULATORY BACKGROUND

2. Section 301(a) of the Act, 33 U.S.C. § 1311(a), prohibits the discharge of any pollutant (other than dredged or fill material) from a point source into waters of the United States except in compliance with a permit issued pursuant to the National Pollutant Discharge Elimination System ("NPDES") program under Section 402 of the Act, 33 U.S.C. § 1342.

3. Section 402(a) of the Act, 33 U.S.C. § 1342(a), provides that the Administrator of EPA may issue permits under the NPDES program for the discharge of pollutants from point sources to waters of the United States. The discharges are subject to specific terms and conditions as prescribed in the permit.

4. "Discharge of a pollutant" includes "any addition of any pollutant or combination of pollutants to waters of the United States from any point source." 40 C.F.R. § 122.2.

5. "Storm water" is defined as "storm water runoff, snow melt runoff and surface runoff and drainage." 40 C.F.R. § 122.26(b)(13).

6. The term “municipal separate storm sewer system” (“MS4”) includes, “a conveyance or system of conveyances (including roads with drainage systems, municipal streets, catch basins, curbs, gutters, ditches, manmade channels, or storm drains) owned or operated by a State, city, town, borough, county, parish, district, association, or other public body (created by or pursuant to State law) having jurisdiction over disposal of sewage, industrial wastes, storm water, or other wastes, including special districts under State law such as a sewer district, flood control district or drainage district, or similar entity, or an Indian tribe or an authorized Indian tribal organization, or a designated and approved management agency under section 208 of the CWA that discharges to waters of the United States.” 40 C.F.R. § 122.26(b)(8)(i).

7. An NPDES permit is required for discharges from an MS4 serving a population of 100,000 or more, Section 402(p)(2)(C) of the Act, 33 U.S.C. § 1342(p); 40 C.F.R. § 122.26(a), 40 C.F.R. § 122.21.

8. An NPDES permit is also required for discharges of storm water associated with industrial activity, as well as for stormwater discharges which MDE or EPA determine to be a significant contributor of pollutants or that contributes to a violation of a water quality standard. Section 402(p)(2) of the Act, 33 U.S.C. § 1342(p)(2); 40 C.F.R. § 122.26(a), 40 C.F.R. § 122.21.

III. EPA’S FINDINGS OF FACT AND CONCLUSIONS OF LAW

9. Baltimore County, Maryland (“Respondent” or “County”) is a “person” within the meaning of Section 502(5) of the Act, 33 U.S.C. § 1362(5).

10. At all times relevant to this Complaint, Respondent has owned and/or operated a municipal separate storm sewer system (“MS4”) as that term is defined in 40 C.F.R. § 122.26(b)(8).

11. Respondent’s MS4 is located within the geographic boundaries of the County.

12. Baltimore County encompasses a total area of approximately 384,825 acres. According to the U.S. Census Bureau, as of 2010, the county’s population was estimated at approximately 800,000 people.

13. Stormwater from the County drains to a number of water bodies, including the Baltimore Harbor, Back River, Lower Gunpowder River, Middle River, Patapsco River and the Chesapeake Bay, in addition to numerous small tributary creeks and streams, which are considered “waters of the United States” within the meaning of Section 502(7) of the Act, 33 U.S.C. § 1362(7); 40 C.F.R. § 232.2; 40 C.F.R. § 122.2.

14. Respondent’s MS4 serves a population of at least 100,000 people.

15. Pursuant to Section 402(b) of the Act, 33 U.S.C. § 1342(b), EPA authorized the Maryland Department of the Environment (“MDE”) to issue NPDES permits on September 5, 1974.

16. MDE issued to Respondent a NPDES MS4 Discharge Permit No. MD0068314, which became effective on June 15, 2005 (hereinafter the "MS4 Permit").

17. The expiration date of the MS4 Permit was June 15, 2010; however, the MS4 Permit has been administratively extended pending a final decision on the renewal application.

18. On December 1, 2002, MDE issued a General Discharge Permit for Storm Water Associated with Industrial Activities ("Industrial SW Permit"). The permit also covers storm water discharges determined to be significant contributor of pollutants. The permit was set to expire on November 30, 2007, but it has been administratively extended.

19. On March 8 - 9, 2011, a compliance inspection team comprised of authorized representatives of EPA inspected Respondent's MS4 program (the "MS4 Inspection").

20. The MS4 Inspection identified a number of violations of Respondent's NPDES permit and the CWA as described below.

Count I: Failure to Adequately Address Illicit Discharges

21. Part III.E.4 of the MS4 Permit requires that the County maintain a program to detect and eliminate illicit discharges. At a minimum, the program shall address illegal dumping and spills, and include appropriate enforcement procedures for investigating and eliminating illegal discharges and dumping.

22. The March 2011 Inspection revealed that Respondent did not implement an adequate program to address illicit discharges through the failure to:

a. Inform and educate the public employees, businesses, and the general public of the hazards associated with illegal discharges; and

b. Train municipal staff, including field employees on illegal discharge identification and reporting procedure.

c. Although the County has established procedures for tracking and reporting illegal discharges complaints received by the County's Watershed Monitoring section of the Department of Environmental Protection and Sustainability, the County has no procedures to assure that complaints received by other County agencies are adequately responded to.

d. The County has not identified or addressed illegal discharges from county-owned facilities, as evidenced by facilities that conduct vehicle washing on impervious surfaces in the absence of best management practices and protective measures in which washwater was seen or evidenced entering into the storm sewer systems. These facilities included the County Department of Education's Cockeysville Service Center and North Point Bus Facility and the County Department of Public Works Perry Road Facility.

23. Respondent's failure to maintain an adequate program for detecting and eliminating illicit discharges violates the MS4 Permit and Section 301 of the Act, 33 U.S.C. § 1311.

Count II: Failure to Develop and Implement Pollution Prevention Plan

24. Part III.E.5 of the MS4 Permit requires that County identify all County-owned facilities requiring Industrial SW permit coverage, and submit the application for such coverage. The County must report on the status of pollution prevention plan development for these facilities.

25. MDE has authorized coverage under the Industrial SW Permit for the stormwater discharges of several county facilities operated by the Baltimore County Department of Education, determining that such discharges can be significant contributors of pollutants.

26. MDE authorized such coverage for the Kenwood Bus Facility, 600 Stemmers Road, Baltimore, Maryland, under registration number 02SW2115.

27. MDE authorized such coverage for the Cockeysville Service Center, 101 Wight Avenue, Cockeysville, Maryland, under registration number 02SW2121.

28. MDE authorized such coverage for the Hopkins Creek Bus Lot, 104 Weber Avenue, Baltimore, Maryland, under registration number 02SW2122.

29. The Industrial SW Permit requires the permittee to develop and implement a stormwater pollution prevention plan (SWPPP) that includes a description of potential sources of pollutants and stormwater management controls appropriate for the facility.

30. The County has not developed a SWPPP for the Kenwood Bus Facility.

31. The County has not developed a SWPPP for the Cockeysville Service Center.

32. The County has not developed a SWPPP for the Hopkins Creek Bus Lot.

33. Respondent's failure to develop and implement SWPPPs for these facilities are violations of the General Industrial SW Permit and Section 301 of the Act, 33 U.S.C. § 1311.

Count III: Failure to Enclose Salt Piles

34. Part III.E.5 of the MS4 Permit requires that County identify all County-owned facilities requiring Industrial SW Permit coverage, and submit the application for such coverage.

35. MDE has authorized coverage under the Industrial SW Permit for the stormwater discharges from the Kenwood Bus Facility, 600 Stemmers Road, Baltimore, Maryland, which operated by the Baltimore County Department of Education, under registration number 02SW2115.

36. The Industrial SW Permit requires that storage piles of salt be enclosed or covered to prevent exposure to precipitation.

37. The inspectors observed several stockpiles of roadway salt at the Kenwood Bus Facility that was exposed to precipitation. The inspectors observed traces of salt residue from one stockpile leading to a ditch outside the facility.

38. Respondent's failure to enclose or cover the salt piles at Kenwood Bus Facility is a violation of the Industrial SW Permit and Section 301 of the Act, 33 U.S.C. § 1311.

39. By discharging pollutants in violation of the MS4 Permit and the Industrial SW Permit, Respondent violated Section 301(a) of the Act, 33 U.S.C. § 1311(a).

IV. ORDER AND REQUEST

AND NOW, this 29th day of May, 2013, Respondent is hereby ORDERED, pursuant to Section 309(a) of the Act, 33 U.S.C. § 1319(a), to do the following:

40. Within thirty (30) days of the effective date of this Order, Respondent shall comply with its MS4 permit, and the Industrial SW Permit where it applies.

41. Within fourteen (14) days of the effective date of this Order, Respondent shall submit to EPA certification of Respondent's intent to comply with this Order. A responsible official must sign on behalf of the Respondent. The certification shall be submitted to:

Mr. Peter Gold (3WP42)
U.S. EPA, Region III
1650 Arch Street
Philadelphia, PA 19103-2029

V. GENERAL PROVISIONS

42. This Administrative Order does not relieve the Respondent of its obligation to comply with all applicable provisions of federal, state or local law and ordinance. This Administrative Order does not constitute a waiver, suspension or modification of the requirements of the CWA or of any issued permit.

43. Issuance of this Administrative Order shall not be deemed an election by EPA to forego any administrative, civil, or criminal action to seek penalties, fines, or any other appropriate relief under the Act for the violations cited herein. EPA reserves the right to seek any remedy available under the law that it deems appropriate for the violations cited above. If EPA initiates such an action, Respondent will be subject to civil penalties of up to \$37,500 per day of violation pursuant to 33 U.S.C. § 1319 and 40 C.F.R. Part 19. If a criminal judicial action is initiated, and Respondent is convicted of a criminal offense under Section 309 of the Act, Respondent may be subject to a monetary fine and/or imprisonment, and may become ineligible for certain contracts, grants, or loans pursuant to Section 508 of the Act.

44. Respondent waives any and all claims for relief and otherwise available rights or remedies to judicial or administrative review which the Respondent may have with respect to any allegation of fact or law set forth in this Order on Consent, including, but not limited to, any right of judicial review of the Section 309(a)(3) Order on Consent under the Administrative Procedure Act, 5 U.S.C. §§ 701-708.

45. EPA reserves all existing inspection authority otherwise available to EPA pursuant to Section 308 of the CWA, 33 U.S.C. § 1318, or pursuant to any other statute or law.

46. The undersigned representative of Respondent certifies that he or she is fully authorized by the party represented to enter into the terms and conditions of this AO and to execute and legally bind the party.

47. All of the terms and conditions of the Administrative Order together compromise one agreement, and each of the terms and conditions is in consideration of all of the other terms and conditions. In the event that this Administrative Order, or one or more of its terms and conditions, is held invalid, or is not executed by all of the signatories in identical form, or is not approved in such identical form by the Regional Administrator or his designee, then the entire Administrative Order shall be null and void.

VI. EFFECTIVE DATE

48. This ORDER is effective upon receipt.

FOR RESPONDENT Baltimore County:

By: 


Date: 4/19/13

Name: Fred Homan

Title: County Admin Officer

SO ORDERED.

Date: 5/29/13


Jon M. Capacasa, Director
Water Protection Division
EPA, Region III

CERTIFICATE OF SERVICE

I hereby certify that on this day, I caused to be filed with the Regional Hearing Clerk, EPA Region III, the original Administrative Order for Compliance on Consent, and that copies of this document were sent to the following individual in the manner described below:

By first class, certified mail, return receipt requested:

Michael E. Field
Baltimore County Office of Law
Historic Courthouse
400 Washington Avenue
Towson, MD 21204

Date: _____

5/30/13



Nina Rivera
Sr. Asst. Regional Counsel
US EPA Region III